

defendants, the surviving trustees of the settlement? And the answer appears to depend on whether the resulting trusts are sought by the wills of the testator or whether they will pass as on an intestacy. As far as the premises 306 Tanjong Pagar Road are concerned I am of the view they undoubtedly pass under the (Singapore) will on the ground that the specific devise of these premises in the will revokes the provision relating to them in the settlement. With regard to the other houses the point arises whether the resulting trust should be held to cover the houses themselves or the income from the houses. I have not been able to find conclusive authority on this point but I am disposed to the opinion that the resulting trust should cover the houses themselves unless the interests of the trust in the settlement I have held to be valid required conversion. I think some support will be found for this opinion in a passage on page 138 of *Lewin on Trusts*, 15th Edn. The provision of \$300 annually for the poor relations in Arabia cannot require this course since it was the intention this money should come from the income derived from the houses. I hold accordingly that the Trust premises now held by the defendants are held in trust for the administrators of the Singapore will, and, subject to any argument it may be desired to put forward on the matter, the defendants should in due course convey the property to the administrators. I have not, of course, been asked to deal with the whole summons and, therefore, I do not propose to express an unqualified opinion, but it may be of assistance to say that, as far as I have gone into the matter, it seems to me the position is the administrators can give effect to the wills as if there never had been a 1928 settlement except in so far as the income trust I have held to be valid is concerned. I would also add that it seems to me a reasonable view in the light of the available evidence to hold that the word "houses" in the will should be deemed to include the houses the Testator purported earlier to dispose of under the settlement.

In conclusion I would like to thank counsel for the very clear and comprehensive manner in which the issues have been put before me.

Order accordingly.

TAN CHOOI THIN (w) & ANOR.

v.

TEO WHEE HONG

[O. C. J. (Buhagiar, J.) August 3, 1953]

[Penang — Civil Suit No. 252 of 1952]

Damages — Measure of damages under ss. 7 and 8 Civil Law Ordinance (Cap. 42) — Whether earnings in contravention of statute should be considered —

Damages under s. 7 to be deducted from damages under s. 8.

This case raises two important points concerning the award of damages under sections 7 and 8 Civil Law Ordinance.

The deceased was a member of the crew of a motor-junk and apart from his wages as such, he derived some income from private trading by importing and exporting what was alleged to be precious stones in contravention of the Customs legislation. Defendant's counsel submitted that this part of the deceased's earnings should not be taken into account.

Held: even if there was reliable evidence as to the nature of this business, the profits made therefrom cannot be excluded in reckoning the deceased's earnings which the Court fixed at \$295 per month. Damages were accordingly awarded under section 8 at \$15,000 and for loss of expectation of life under section 7 at \$3,000.

On the submission by Counsel for the defendant that the damages under section 7 should be deducted from the amount awarded under section 8, —

Held, following *Davies v. Powell Duffryn Associated Collieries, Ltd.*⁽⁷⁾: the provisions of section 7(5) of the Civil Law Ordinance do not entitle the plaintiffs to obtain damages in addition to that awarded under section 8. All that the sub-section does, according to the language used, is to provide that the rights shall co-exist.

Cases referred to:—

- (1) *Kang Bark Teng & Anor. v. Lee Kwee Lim & anor.* (1952) M.L.J. 27.
- (2) *Cutler v. Wandsworth Stadium, Ltd.* (1949) A.C. 398; (1949) 1 All. E.R. 544.
- (3) *Benham v. Gambling* (1941) 1 All E.R. 7.
- (4) *Seow Seng Choon v. Yam Kim Chye & Anor.* (1952) M.L.J. 244; 3 M.L.R. 81.
- (5) *Heatley & Anor. v. Steel Co. of Wales, Ltd.* (1953) 1 All E.R. 489.
- (6) *Yelland & ors. v. Powell Duffryn Associated Collieries, Ltd.* (1941) 1 All E.R. 278.
- (7) *Davies v. Powell Duffryn Associated Collieries, Ltd.* (1942) A.C. 601.
- (8) *Rose v. Ford* (1937) A.C. at p. 852.
- (9) *The Aizkarai Mendai* (1938) P. at p. 276.
- (10) *Ellis v. Raine* (1939) 2 K.B. 180.
- (11) *Lok Yin v. Pat Thoo* (1948) M.L.J. 26.

CLAIM FOR DAMAGES.

Ong Huck Lim for the plaintiffs.

G. H. Conaghan for the defendant.

Cur. Adv. Vult.

Buhagiar, J. : — This is a claim by the plaintiffs as administratrix and administrator respectively of the Estate of Lim Huat Lye, for the benefit and on behalf of certain dependants of the deceased who suffered damage from the negligence of the defendant or his servant or agent and also for and on behalf of the Estate of the said deceased.

Liability for negligence was admitted by the defendant and the question is therefore limited to the quantum of damages.

The said Lim Huat Lye died on the 5th day of March, 1952, as a result of a collision between a motor-cycle he was riding and a motor-car belonging to the defendant and driven by a servant or an agent of the defendant.

The claim is :—

- (a) on behalf of the Estate of the said Lim Huat Lye, deceased, for special damages and for general damages for loss of expectation of life— under section 7 of the Civil Law Ordinance (S.S. Cap. 42); and
- (b) on behalf of the dependants of the said deceased for general damages under section 8 of the Civil Law Ordinance (S.S. Cap. 42).

Lim Huat Lye, the deceased, was thirty-three years old; he had a good, strong, healthy constitution; he was a member of the crew of a motor-junk, belonging to Lim Eng Chor. The deceased was married to Tan Chooi Thin, the 1st plaintiff; she was five months pregnant at the time of the accident and a daughter, Lim Guat Eng, was born later.

The deceased was a widower when he married Tan Chooi Thin; there were two daughters from the first marriage that is, in Lim Guat Sim and Lim Guat Ee, whose ages are about 9 and 7 respectively; they are both attending school. They have been living with their maternal grandmother, Khoo Geok Seow since the death of their mother. The deceased also left a father, Lim Hong Heoh and a step-mother, Lee Kim Leap.

The deceased used to make the following contributions towards the said relatives, namely :—

- (a) to his wife he used to give \$40 a month towards household expenses and used to pay \$6 a month for rent. He also gave her \$100 a month as cake money;
- (b) to Khoo Geok Seow, towards the maintenance of his two daughters by the first marriage \$50 a month;
- (c) to his father \$50 or \$60 a month.

The deceased earned wages at the rate of \$100 a month but he also earned a bonus; according to Lim Eng Chor, the employer of the deceased, this bonus amounted to between \$200 and \$300 every six months, say \$45 a month. The deceased also did some private business on the trips between Medan and Penang. There is no clear evidence as to the extent of the profit made by the deceased in the business he was carrying. Tan Chooi Thin, the deceased's wife, said that the profit amounted to about \$1,000 every few trips and that her husband would be away for four days for each trip; she also added that every few trips would be done in a fortnight's time. Tan Chooi Thin was rather vague about this figure and she obviously was not speaking of her own knowledge. While I am satisfied that the deceased carried on some business and

that he made some profit out of this business, I do not think one can rely on the figure suggested by Tan Chooi Thin for the purpose of ascertaining the amount of profit made; *arbitrio boni viri* I assess made in connection with this business at \$150 a month.

Counsel for the defendant submitted that no account can be taken of the profits made by the deceased in connection with the business he was carrying on the ground that the business consisted in importing and exporting precious stones and such trading was illegal being in contravention of the Customs legislation which prohibits such trading without a licence from the competent authority. There is no evidence to show that the business carried on by the deceased consisted in such trading and the defendant's contention is based on certain statements made by Lim Eng Chor, the employer of the deceased. This witness said that he ceased going to sea in 1951; he did not know that the deceased had been carrying on any private business; he heard about this only after the deceased's death; he stated that he knew there was a partnership in which the deceased was a partner and to which the deceased had contributed a capital of \$4,400 and that he understood from the deceased's partners that the business of the partnership consisted in dealing i.e. importing and exporting precious stones; he could not say whether or not there was a licence in respect of such trading. But even if there was reliable evidence as to the nature of the business I do not think that profits made from that business could be excluded in reckoning the deceased's earnings. In *Kang Bark Teng & Anor. v. Lee Kwee Lim & Anor.*⁽¹⁾, the Court allowed earnings by the deceased which he made as a hawker of pork when the deceased had no licence to carry on that business and was thereby committing a flagrant breach of section 194(4) of the Municipal Ordinance. The point does not seem to have been argued before that Court and no authorities are given for allowing such earnings. In my opinion the principle laid down in the line of cases ending with *Cutler v. Wandsworth Stadium, Ltd.*⁽²⁾, applies, a *contrario sensu*, to cases similar to the present one. In that case it was decided that a breach of a duty imposed by statute does not give a right of civil action to the person who is damnified by the breach unless it is expressly or impliedly provided by the statute that such right is to accrue. There is no question that the remedy provided by the Customs Proclamation and the Regulations made thereunder for any breach of any of the provisions thereof is by way of penalty and no right of civil action accrues. The principle laid down in the abovementioned case applies, I think to the case of a defendant who is sued for damages for having by

negligently driving his car caused injuries to a motorcyclist cannot escape liability by pleading that at the time of the accident the plaintiff was not in possession of a valid driving licence or of a valid registration licence in respect of the motor-cycle. Similarly it applies to a case like the present one.

For the purpose of this action, therefore, I reckon the income of the deceased to be at the rate of \$290 a month.

With regard to damages under section 7 of the Civil Law Ordinance, the difficulties of assessing these damages have been expressed in *Benham v. Gambling*⁽³⁾; in that case, however, certain directions have been laid down; as pointed out by the Court of Appeal, Singapore, in *Seow Seng Choon v. Yam Kim Chye & Anor.*⁽⁴⁾ these directions have resulted in the awarding of moderate but arbitrary sums of money for loss of expectation of life and it is a matter which it is impossible to assess satisfactorily; in that case regard was had to the fall in the value of money since the decision of *Benham v. Gambling*⁽³⁾ and the sum awarded of \$4,000 was not considered manifestly excessive. In the present case the deceased died without regaining consciousness after the accident and therefore no amount is to be awarded for pain and suffering. I assess the damages for loss of expectation of life at \$3,000.

As to special damages on behalf of the Estate of the deceased, Tan Chooi Tin stated and produced documentary evidence to prove that she paid \$200 for the site of a grave, \$410 for a coffin and \$500 as fees in connection with the grant of the Letters of Administration. She also stated that the motor-cycle which the deceased was riding at the time of the accident was a total loss and that this machine was bought for \$950. I allow, therefore, \$2,060 as special damages.

With regard to damages under section 8 of the Civil Law Ordinance, it was pointed out in *Heatley & Anor. v. Steel Co. of Wales, Ltd.*⁽⁵⁾, that the Court has, in the best way it can, to find a sum of money which it thinks will fairly compensate the family of the deceased. In the present case the deceased was in the prime of life with an income as assessed above of \$295 a month; he left a widow and three daughters and a father who is an old man of 69 and not able to do any work and who, although not completely dependent on him, was receiving from the deceased a sum of \$50 a month. I assess the damages under this head at \$15,000.

Counsel for the defendant raised the question of duplication of damages, and submitted that any amount of damages awarded under section 7 of the Civil Law Ordinance must be deducted from the amount awarded

under section 8 of that Ordinance.

Sub-section (5) of section 7 of the Civil Law Ordinance provides:—

"The rights conferred by this section for the benefit of the estates of deceased persons shall be in addition to and not in derogation of any rights conferred on the dependants of deceased persons by section 8 of this Ordinance."

Section 7 of the said Ordinance imports into the Settlements the law introduced in England by the Law Reform (Miscellaneous Provisions) Act, 1934. The provisions of sub-section (5) of this section correspond to sub-section (5) of section 1 of that Act. In English cases the argument has been advanced that that sub-section means that damages may be awarded under section 1 of the Law Reform (Miscellaneous Provisions) Act, 1934 independently of any awarded under the Fatal Accidents Acts.

Sub-section (5) of section 1 of the Act of 1934 has been the subject of interpretation by the Court of Appeal in the case of *Yelland & Ors. v. Powell Duffryn Associated Collieries, Ltd.*⁽⁶⁾, which went later to the House of Lords *sub. nom. Davies v. Powell Duffryn Associated Collieries, Ltd.*⁽⁷⁾, and this case settled the matter. But even earlier cases show that there was not to be duplication of damages under the two Acts. In many cases the claims under these Acts are tried at the same time and very often the claimants are the same in both cases. Lord Wright in *Rose v. Ford*⁽⁸⁾ said: "I think in practice no duplication of damages need occur. I think the jury would be properly directed to take into account either that they were at the same time giving damages under Lord Campbell's Act as they did here, or that such damages might be or had been given". Langton, J., in *The Aizkarai Mendai*⁽⁹⁾ said: "I have thought it right to bear in mind that in my view all the participants under those Acts (i.e. the Fatal Accidents Acts) have been previously compensated", when he was awarding damages under the Act of 1934 to the dependants of sailors drowned in a collision at sea.

In *Ellis v. Raine*⁽¹⁰⁾ where the Court of Appeal ordered a new trial as to damage under the Act of 1934 and under Lord Campbell's Act, MacKinnon, L.J. at p. 184 said:—

"It will, of course, be open to, and indeed the duty of, the learned judge who presides at the new trial to point out to the jury that as in this case the dependants who claim under Lord Campbell's Act are the same persons as the beneficiaries of the estate of the deceased who claim under the Law Reform Act, any recovery under the latter Act may diminish, and may well extinguish, any claim under the former Act, and that those dependants or claimants must not to any extent be allowed to have their claim for damages twice over."

MacKinnon, L.J. in the Court of Appeal in *Yelland & Ors. v. Powell Duffryn Associated Collieries, Ltd.*⁽⁶⁾, at p. 289 said:—

"Counsel for the respondents says, however, that the words 'in addition to and not in derogation of the rights' under the Act of 1846 mean that anything recovered under the 1934 Act shall not be allowed to diminish the full amount of damages which would be recoverable under the 1846 Act if the Act of 1934 had never been passed. I think that this argument is unsound. The clause refers to 'the rights' under the Act of 1846. Such 'rights' seem to be only the right of a personal representative to claim damages. The clause says nothing about the measure of damages so recoverable. If the legislature had meant to enact that the amount of damages under the 1846 Act should not be affected by anything recovered under the 1934 Act, they had the very pertinent precedent of the Fatal Accidents (Damages) Acts, 1908. Section 1 of that Act simply and clearly provides: 'In assessing damages under the Fatal Accidents Act, 1846 there shall not be taken into account any sum paid or payable on the death of the deceased under any contract of insurance.....' I think it is impossible to hold that the words 'The rights conferred by this Act..... shall be in addition to and not in derogation of any rights conferred by' the Act of 1846 are equivalent to: 'In assessing damages under the Act of 1846, any sum recovered under this Act shall not be taken into account'. The truth is, as far as I can see, that 'not in derogation of' means nothing more than 'shall be in addition to'. I have no idea why Parliament, or the draftsman, indulged in this unnecessary tautology, but I am quite satisfied that 'not in derogation of' cannot bear the meaning suggested for the respondents."

In the House of Lords in *Davies v. Powell Duffryn Associated Collieries, Ltd.*⁽⁷⁾, it was held that the sub-section does not establish an exception to the general rule that in the assessment of damages under the Fatal Accidents Acts any benefit accruing to a dependant by reason of the relevant death must be taken into account and apportioned. Lord Russell of Killowen said (at p. 607) :—

"All that this sub-section does, according to the language used, is to provide that the rights shall co-exist, but I can find no words which would justify me in holding that the sub-section purports to alter the measure of damages recoverable for the benefit of a dependant under the Fatal Accidents Acts I agree with the Court of Appeal that the words 'not in derogation of' merely emphasise what has been already said, and the rights conferred by the other Acts are additional to the rights conferred by the other Acts and are to that extent tautological."

The principle laid down in the abovementioned English cases has been adopted by the High Court of the former Federated Malay States in 1941 in the case of *Lok Yin v. Pat Thoo*⁽¹¹⁾.

The sum of \$3,000 is therefore to be deducted from the sum of \$15,000 leaving a sum of \$12,000 of which :—

- (a) \$2,500 is to be allotted to each of the deceased's two daughters, issue of the first marriage, that is Lim Guat Sim and Lim Guat Ee;
- (b) \$700 to the deceased's daughter by the 1st plaintiff, Tan Chooi Thin;
- (c) \$600 to the deceased's father Lim Hong Heoh; and
- (d) the rest, i.e. \$5,700 to the deceased's widow, Tan Chooi Thin.

Costs between Party and Party to be paid by the defendant and the difference between the Party and Party costs and the Solicitor and Client costs of the plaintiffs to be paid to the plaintiffs out of the Estate of the said Lim Huat Lye.

Order accordingly.

**Re WEE CHEOW KENG, DECD.;
WEE SIN TECK v. THE BRITISH MALAYA
TRUSTEE & EXECUTOR CO., LTD.**

[C.A. (Murray-Aynsley, C.J., Storr and Whitton, JJ.)
August 6, 1953]

[Singapore — Civil Appeal No. 7 of 1953]

Probate and Administration — Trustees — Deposit in Bank in joint names — Receipt and bearer security — Banking account — Rights of survivor in the event of death — R.S.C. O.52, r. 1 — Currency Ordinance, 1938, s. 8(1).

These proceedings arose out of the administration of the estate of one Wee Cheow Keng who died on the 18th March 1939.

The Originating Summons was taken out in 1941 and recently some of the questions raised therein were answered by Mr. Justice Brown and against his answer to prayer 5 the present appeal is brought. The subject matter of this appeal related to a fixed deposit of \$100,000 paid in by the deceased with the Sze Hai Tong Bank in the joint names of himself and the present appellant, his son, who was then an infant. The Bank issued a receipt in Chinese and the material part of the receipt which had given rise to this action reads as follows:— "This document shall be received by Mr./Chop Wee Cheow Keng and Wee Sin Teck or bearer in Singapore." This receipt had been retained by the deceased during his lifetime, and was in his possession at the time of his death.

At the hearing before the Court of the first instance, the receipt was treated as a bearer receipt and the question which the Court considered as material was who had the title to this deposit receipt. It was held that the holder of it had the title, i.e. the deceased, and since there was no evidence of any gift or of any declaration of trust, the deceased was solely entitled to the deposit.

Held by the Court of Appeal reversing the judgment appealed against: the document was not a security or a document of title but a mere receipt. The words "or bearer" on the receipt merely have the effect of excusing payment by the Bank to a holder unless they had had a contrary direction from the depositors. The transaction must be treated as any other deposit in a bank and the right to the deposit would pass at law to the survivor of the two i.e. to the appellant.

[Editorial Note:— On the question of negotiability the main argument was it is not competent for parties to annex the attributes of negotiability to any contract except under statute or the law merchant. Cases cited were, *inter alia*, *Bechuanaland Exploration Co. v. London Trading Bank Ltd.* (1898) 2 Q.B. 658 and *Edelstein v. Schuler & Co.* (1902) 2 K.B. 144.]

CIVIL APPEAL.

H. R. Wilson for the appellant.

R. H. Green for the respondents.

T. E. Atkinson for the trustees.

Cur. Adv. Vult.

Murray-Aynsley, C.J.: — In this case the testator made a deposit in a bank in the joint names of himself and of the appellant who was then an infant. The bank issued a receipt for the money in the names of the testator and the appellant which document recited the fact that interest was agreed at a certain rate and added that "this amount shall be received" by the named persons "or bearer in Singapore". I think that